IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2017

CORAM :

THE HONOURABLE Mr.JUSTICE M.SUNDAR

W.P.No.3424 of 1998

1.Mrs.M.Hemavathy
2.Miss.R.Sathyabama
3.Mr.S.Palanivel
4.Mr.S.Srinivasan ... Petitioners

Vs.

1.The State of Tami Nadu
rep.by its Secretary to Government,
Public Works Department,
Fort St.George,
Chennai-9.

2.The Revenue Divisional Officer,
Ranipet, North Arcot District.

3.The Revenue Divisional Officer,
Vellore-9. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents herein to make a reference under Section 18 of the Land Acquisition Act to the appropriate Court for claiming higher compensation in respect of the compensation awarded by the 2nd respondent herein in Award No.4/1975 dated 29.11.1975 with regard to 22,503 sq.ft of land belonging to Late V.G.Sundaramurthy in Vellore T.S.No.1554/2 and 1555/2.

For Petitioners : Mr.T.Karunakaran
For Respondents : Mr.A.Zakir Hussain, Govt Advocate

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ORDER

This writ petition turns on a narrow campus. The writ petitioners are four in number. They are legal heirs of one V.G.Sundaramurthy, who died on 31.12.1996.

2.Lands belonging to the said late V.G.Sundaramurhty were acquired under Land Acquisition Act, 1894. The lands were acquired for the purpose of forming of by-pass road at Vellore.

3.Lands belonging to late V.G.Sundaramurthy, which were acquired, are comprised in Survey Nos.1554/1, 1556/2, 1553/2 & 1555/2, admeasuring a total extent of 22,503 sq.ft. situate in North Vellore Village, Vellore Taluk, Vellore District (hereinafter referred to as 'said land').

4. I have heard Mr.T.Karunakaran, learned counsel appearing for the writ petitioners and Mr.A.Zakir Hussain, learned Government Advocate appearing for the respondents.

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5.On the acquisition of the said land, an Award was passed on 29.11.1975 and it is not disputed that late V.G.Sundaramurthy received the award amount. It is the specific contention of the learned counsel for the petitioners that late V.G.Sundaramurthy received the said award amount

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under protest and the protest is that the quantum of award is incommensurate with the land acquired and therefore, grossly inadequate.

6.It is also the case of the writ petitioners that he (late V.G.Sudaramurthy) gave a letter dated 30.12.1975 saying that the award has been received under protest and that there should be a reference under Section 18 of the Land Acquisition Act. The said letter is said to have been given to the Revenue Divisional Officer, Ranipet, North Arcot District.

7.Per contra, Mr.A.Zakir Hussain, learned Government Advocate, points out that there is no acknowledgement for the aforesaid communication/letter dated 30.12.1975 said to have been written by late V.G.Sundaramurthy. It is also pointed out by the learned Government Advocate that the first petition/communication from late V.G.Sundaramurthy, for which there is due acknowledgement, is dated 04.08.1989 and that has been sent to the Commissioner of Land Administration, Chepauk, Chennai.

सत्यमेव जयते

8.Thereafter, the Special Commissioner for Land Administration, Chepuak has sent a communication dated 19.08.1989 to the District Revenue Officer, enclosing the petition dated 04.08.1989 from late V.G.Sundaramurthy. Thereupon the Revenue Divisional Officer, Ranipet, sent a communication dated 26.08.1989 bearing No.x/K/11094/89, stating

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that the said V.G.Sundaramurthy could revive his request. In this communication also, there is a reference to the petition dated 04.08.1989, but there is no reference to the aforesaid communication dated 30.12.1975 alleged to have been sent by late V.G.Sundaramurthy. Ultimately, the Revenue Divisional Officer sent a communication dated 17.02.1977 bearing Ref.No.e/f/gp1/6095/96 calling upon the said V.G.Sundaramurthy to appearing before him for an enquiry with regard to his request for referring the matter for enhancement of compensation under Section 18 of the Land Acquisition Act.

9.To be noted, in the interregnum, V.G.Sundaramurthy had died on 31.12.1996. Therefore, legal heirs of V.G.Sundaramurthy caused a notice through lawyer dated 31.03.1997 to the respondents, *inter alia* stating that they were present before the Revenue Divisional Officer on the given date ie., 24.02.1997, but nothing has happened thereafter. Therefore, they have laid the instant writ petition seeking a mandamus to the respondents to make a reference under Section 18 of the Land Acquisition Act to the appropriate Court for claiming higher compensation in respect of the said land.

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10.From the aforesaid narrative it will be clear that the issue has now narrowed down to *whether late V.G.Sundaramurthy, having received the award and admittedly having been present before the Collector for receiving*

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the award, made a request for reference under Section 18 of the Land Acquisition Act, within the statutorily prescribed time period.

11. Admittedly, the prescribed period for making such request is six weeks and the same contained in Section 18(2)(a) of the Land Acquisition Act, 1894.

12.Before I advert to the limitation aspect, it is also necessary to note that the Land Acquisition Act, 1894 is now not in vogue and the Act now in vogue is The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which is hereinafter referred to as 'New Act'. For the sake of clarity, the Land Acquisition Act, 1894 is hereinafter referred to as 'Old Act'.

13.Question as to whether reference under Section 18 of the Old Act is available to the petitioner has to be first examined.

14.On a cursory reading of the provisions, I find that Section 114 of the New Act deals with *Repeal and Saving* and the same reads as follows_

> "114.Repeal and saving:- (1)The Land Acquisition Act, 1894 (1 of 1984) is hereby repealed.
>
> (2)Save as otherwise provided in this Act the repeal under sub-section (1) shall not be held to prejudice or affect the general application of section 6 of the General

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Clauses Act, 1987 (10 of 1987) with regard to the effect of repeals."

Reading of Section 114 of the New Act takes us to Section 6 of the General Clauses Act, 1897 (10 of 1897), which in turn reads as follows_

"6.Effect of repeal:- Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereinafter to be made, then, unless a different intention appears, the repeal shall not_

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b)affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c)affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d)affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e)affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such

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penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

Therefore, if the said late V.G.Sundaramurthy had, in fact, made a request for reference under Section 18 of the Old Act on 30.12.1975 itself, the remedy may still be available to him, but, unfortunately, in the instant case, there is nothing to show the acknowledgement of the aforesaid communication dated 30.12.1975.

15.As alluded to supra, there is no reference to the said communication dated 30.12.1975 in any of the subsequent communications from the respondents or from the petitioners. All the subsequent communications refer only the letter/petition dated 04.08.1989, which is more than 13 years after the award. Most importantly, even in the Notice sent through counsel by the legal heirs of late V.G.Sundaramurthy, (who are four writ petitioners before this Court), there is no mention about the communication sent on 30.12.1975.

16.To be noted, the learned Government Advocate, appearing for the respondents, on instructions, disputes the communication dated 30.12.1975. It is his specific and assertive case that no such communication has been received by the respondents. Learned Government Advocate emphatically submitted that there is no reference to this effect and in the light of the petitioners not being able to produce any acknowledgement, the same cannot be considered as a request for reference under Section 18 of the Old

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Act. Therefore, the prayer for mandamus cannot be acceded to, is his submission.

17.As there is nothing on record to show that the petitioners (predecessor in title viz., late V.G.Sundaramurthy) made a request for reference under Section 18 of the Old Act, prior to 04.08.1989, I have no option other than not to accede to the request for mandamus in the instant writ petition, as no request for reference has been made within six weeks time frame adumbrated in Section 18(2)(a) of the Old Act. On this ground, the writ petition has to necessarily fail, it deserves to be dismissed and I do so.

18.At this juncture, Mr.T.Karunakaran, learned counsel appearing for the petitioners, points out that the Award that was made on 29.11.1975 is a common award in favour of 26 persons and that for many other persons, whose lands were acquired, enhancement of compensation amount has been given pursuant to the reference under Section 18 of the Old Act, but, there is nothing on record to establish or buttress this submission. Therefore, in the absence of any record, this aspect cannot be looked into in this writ petition.

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19.Suffice to add that if a representation is made by the writ petitioners to the respondents for enhancement of compensation, not for reference under Section 18 of the Old Act, which has been negatived in the instant writ petition, but to consider the petitioners on par with the aforesaid

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persons for whom Award amount is said to have been enhanced (if it had been enhanced at all), this order of dismissal of the writ petition will not preclude the respondents from considering such representation, if they chose to do so.

20.With the above observation, the writ petition is dismissed. Considering the nature of the matter and the trajectory of the litigation, there shall be no order as to costs.

08.11.2017

Index : Yes / No
Internet : Yes / No
ssv

To
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State of Tami Nadu
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M.SUNDAR, J.

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